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## IN THE UNITED STATES DISTRICT COURT

## FOR THE NORTHERN DISTRICT OF CALIFORNIA

GENE PLYLEY,

Plaintiff,

No. C 12-05825 WHA

v.

MARLENE L. GRANGAARD,  
individually and as trustee of the  
MARLENE L. GRANGAARD  
REVOCABLE LIVING TRUST, dba  
CLAM BEACH INN, aka CLAM DIGGER  
BAR,**ORDER RE ORDER TO  
SHOW CAUSE AND DISMISSAL**Defendants.  
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Pursuant to the order to show cause dated February 12, 2014 (Dkt. No. 42), defendants have filed a response, opposing the request of plaintiff's attorney Jason Singleton for an order dismissing the federal claim and not extending supplemental jurisdiction over the state claim. This is well after the commencement of this lawsuit in November 2012, and after defendants moved for summary judgment — which was granted in part in November 2013. Trial is now set for March 24, 2014, but plaintiff evidently has decided to walk away from this action because, he says, he "is now terminally ill and not expected to survive long" (Opp. 1). No declaration or affidavit confirms that.

Given that trial is a mere month away, and defense counsel have spent considerable time and effort on litigation thus far, any dismissal should be conditioned on the dismissal of the entire action *with prejudice*. Accordingly, plaintiff has the option of either accepting such a dismissal with prejudice or proceeding with the litigation of his claims. Whether or not

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1 plaintiff should pay attorney's fees and costs to defendant if he dismisses is not decided now.

2 Plaintiff must file a notice as to which option he chooses by **5 PM ON MARCH 6, 2014.**

3 With respect to defendants' potential motion for discovery sanctions, it is premature to  
4 consider retaining jurisdiction for that purpose as dismissal has not yet been entered. Defense  
5 counsel should note, however, that if they seek such sanctions, they should file a proper motion  
6 that would be due by **5 PM ON MARCH 6, 2014.**

7 Furthermore, until there is an actual dismissal, please be aware that all deadlines and  
8 dates remain in this case. As such, there will still be a summary judgment hearing on March 6,  
9 2014, as well as a final pretrial conference on March 12, 2014, and a trial on March 24, 2014.  
10 This also means that submissions for the final pretrial conference are due by **MARCH 5, 2014.**  
11 Failure by Attorney Singleton to appear at the final pretrial conference or at trial will likely  
12 result in this action being dismissed with prejudice for lack of prosecution

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14 **IT IS SO ORDERED.**

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16 Dated: February 21, 2014.

  
17 WILLIAM ALSUP  
18 UNITED STATES DISTRICT JUDGE

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